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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 A.B., a minor, By and Through
11 W.F.B., His Guardian Ad Litem,

12 Plaintiff,

13 v.

14 SAN FRANCISCO UNIFIED
15 SCHOOL DISTRICT,
Defendant.

CASE NO. 07-4738 PJH

EX PARTE APPLICATION FOR
ORDER TO FILE UNDER SEAL
AFFIDAVIT OF COUNSEL IN SUPPORT
OF PLAINTIFF'S MOTION TO PROTECT
PLAINTIFF'S RIGHT TO PRIVACY
BY PROCEEDING UNDER A
PSEUDONYM

Memorandum of Points and Authorities
Contained Herein and Declaration in
Support of Application Filed Concurrently
Herewith

17 _____ /
18 On behalf of Plaintiff A.B. by and through his Guardian Ad Litem, W.F.B., Roberta S.
19 Savage, counsel for Plaintiff, hereby moves this Court for an order allowing Plaintiff to file under
20 seal "Affidavit of Counsel in Support of Plaintiff's Motion to Protect Plaintiff's Right to Privacy By
21 Proceeding Under a Pseudonym" dated September 13, 2007 and filed September 14, 2007. This
22 motion is based upon all papers and pleadings filed in this matter, the following points and
23 authorities, and the separately filed Affidavit of Counsel, which Plaintiff seeks to have filed under
24 seal and which reveals the full names of Plaintiff and his Guardian Ad Litem.

25 MEMORANDUM OF POINTS AND AUTHORITIES

26 The instant case was filed against Defendant SAN FRANCISCO UNIFIED SCHOOL

27 A.B. v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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Ex Parte Application for Order to File Under Seal Affidavit of Counsel in Support of Plaintiff's Motion to Protect
Plaintiff's Right to Privacy By Proceeding Under a Pseudonym

1 DISTRICT pursuant to the Individuals with Disabilities Education Act (*hereinafter* “IDEA”). (*See*
2 *generally* 20 U.S.C. §§1400 et seq.). As alleged in the complaint, Plaintiff is an eleven year old
3 child with a disability. Plaintiff and his Guardian Ad Litem wish to proceed with this case under the
4 names “A.B.” and “W.F.B.,” respectively, so that Plaintiff’s privacy rights will be protected.
5 Plaintiff and his Guardian Ad Litem also request that no documents be filed on the public record
6 with their full names and/or other personally identifiable information.

7 Plaintiff, as a minor middle school student and a child with a disability, has a constitutionally
8 and statutorily protected privacy interest in avoiding disclosure of personal matters, such as
9 educational records and medical records. (*See e.g. Norman-Bloodsaw v. Lawrence Berkeley*
10 *Laboratory*, 138 F.3d 1260, 1273-74 (9th Cir. 1998) (constitutional right to privacy). The statutory
11 protections are guaranteed by the IDEA and the federal regulations promulgated thereunder (34
12 C.F.R. §§300.560-576 (confidentiality of student’s records)), as well as the Family Educational
13 Rights and Privacy Act of 1974 (*hereinafter* “FERPA”), as amended, Section 1232g(b) of Title 20
14 of the United States Code and the federal regulations promulgated thereunder, commencing at
15 Section 99.1 of Title 34 of the Code of Federal Regulations (20 U.S.C. §1232g(b); 34 C.F.R. §§ 99.1
16 *et seq.* (Subparts A and D). The phrase “personally identifiable information” is defined similarly,
17 both in the IDEA regulations and FERPA regulations, as including the student’s name; the student’s
18 address, the name of the student’s parent or other family member; a personal identifier, such as a
19 social security number or student number; a list of personal characteristics or other information that
20 would make it possible to identify the student. (*See* 34 C.F.R. §300.500 (IDEA); *see also* 34 C.F.R.
21 §99.3 (FERPA)).

22 The Affidavit of Counsel was lodged in support of Plaintiff’s Application for Order to
23 Protect Plaintiff’s Right to Privacy by Proceeding Under a Pseudonym”. While Local Rule 3-
24 17(a)(2) requires that only the initials of that child should be used where the involvement of a
25 minor child must be mentioned in a pleading, Plaintiff believes that the Court needs to have the
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Ex Parte Application for Order to File Under Seal Affidavit of Counsel in Support of Plaintiff’s Motion to Protect
Plaintiff’s Right to Privacy By Proceeding Under a Pseudonym

1 personally identifiable information contained in the Affidavit of Counsel as necessary
2 background information in order to consider that application.

3 Defendant will not be prejudiced by allowing Plaintiff to file the Affidavit of Counsel
4 under seal, because Defendant will be served with the Affidavit of Counsel, which identifies the
5 full names of Plaintiff and his Guardian Ad Litem. Defendant has personal knowledge of the
6 identity of Plaintiff and his family and the dispute. Requiring documents to be filed under seal
7 will not in any way prejudice Defendant. Finally, although the public, generally, has an interest
8 in the actions brought before the federal courts, Plaintiff's privacy interest outweighs the public
9 interest, and the public has no interest in the identity of the named Plaintiff that outweighs the
10 Plaintiff's interest in keeping sensitive information confidential.

11 Accordingly, Plaintiff requests that the Court enter an order that Plaintiff be permitted to
12 file under seal the "Affidavit of Counsel in Support of Plaintiff's Motion to Protect Plaintiff's
13 Right to Privacy By Proceeding Under a Pseudonym" dated September 13, 2007 and filed
14 September 14, 2007.

15 Respectfully Submitted,

16 ROBERTA S. SAVAGE

17 Attorney for Plaintiff A.B.

18 Dated: September 19, 2007

19 By:

20 Roberta S. Savage

21 A.B. v. SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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23 *Ex Parte* Application for Order to File Under Seal Affidavit of Counsel in Support of Plaintiff's Motion to Protect
24 Plaintiff's Right to Privacy By Proceeding Under a Pseudonym